



IT IS ORDERED as set forth below:

Date: February 25, 2011

Mary Grace Diehl

**Mary Grace Diehl
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re:	:	CASE NUMBER
	:	
GRACE JOHANNA MCCARTHY,	:	03-64009-MGD
	:	
Debtor.	:	CHAPTER 7
	:	

**ORDER DENYING MOTION TO RE-OPEN
AND MOTION TO VACATE SHERIFF SALE**

Before the Court are an Application for Waiver of Chapter 7 Filing Fee (“Application”), “Motion to Reopen Chapter 7 Case based on Fraudulent Concealment” (“Motion to Reopen”), and “Motion to Vacate a Sheriff Sale of Property Due to Fraudulent Concealment” (“Motion to Vacate Sheriff Sale”) filed by Grace Johanna McCarthy, *pro se*. (Docket Nos. 206, 207 & 209).

The above-styled Chapter 7 has a lengthy history. Ms. McCarthy, the former Chapter 7 Debtor, filed this case nearly eight years ago on March 18, 2003. She received a discharge on

January 13, 2004. C. Brooks Thurmond III, Chapter 7 Trustee (“Trustee”), filed a no distribution report on September 14, 2010. Debtor’s case was closed on September 15, 2010. Many of the problematic issues in the case involved the property referenced in Ms. McCarthy’s Motions: 50 Lakeland Dr., N.E., Unit E-5, Atlanta, GA 30305 (“Property”). A cursory review of the case history with respect to the Property is useful to address the relief requested by Ms. McCarthy.

As of the petition date, the Property was not subject to a mortgage lien. The Property was subject to a judgment lien held by 50 Lakeland Condominium Association, Inc.’s (“50 Lakeland”). (Claim No. 2). The attempted foreclosure by 50 Lakeland precipitated Debtor’s bankruptcy filing. On March 10, 2009, the Court denied 50 Lakeland’s Motion for Relief from Stay based on the presence of a sufficient equity cushion to preserve the Condo Association’s interest. (Docket No. 185). However, based on the unusually long pendency of the case, the Court’s denial was conditioned on Trustee’s ability to secure a bona fide purchaser and file a motion to sell the Property by December 31, 2009. If Trustee did not meet the deadline, 50 Lakeland’s Motion for Relief could be granted. An Order granting 50 Lakeland’s Motion for Relief was entered on July 2, 2010. (Docket No. 200). Later, the Trustee filed a notice of abandonment with respect to the Property on August 14, 2010. (Docket No. 202). In addition to 50 Lakeland’s proof of claim, Vesta Holdings (“Vesta”) also filed a secured claim in the amount of \$1,191.45. (Claim No. 1). Vesta’s proof of claim was based on unpaid 2003 real estate taxes on the Property and was secured by the Property.

Ms. McCarthy seeks to reopen the above-styled Chapter 7 case to resolve a payment history dispute with Vesta regarding 2004 taxes on the Property and any resulting action that may have occurred as a result of unpaid taxes. Ms. McCarthy alleges that Vesta’s tax records on the Property include fraudulent information. Ms. McCarthy also asserts that she made post-petition payments

through a third-party entity to resolve the county tax issues on the Property. Ms. McCarthy also states that her 2004 Fulton County Property Tax bill showed a zero balance. She attaches this bill to each motion. Ms. McCarthy's Motion to Vacate Sheriff Sale includes similar fraud allegations with respect to Vesta and requests that this Court intervene in a presumably completed sheriff's sale of the Property.

This Court cannot provide the relief sought by Ms. McCarthy in her Motions. The Court does not have subject matter jurisdiction to rule on these matters. The bankruptcy court has jurisdiction in "any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11." 28 U.S.C. § 157(a). A proceeding "arising under" title 11 involves a substantive right created by the Bankruptcy Code. *In re Toledo*, 170 F.3d 1340, 1344-1345 (11th Cir. 1999). A proceeding "arising in" title 11 typically includes administrative matters that can only arise in a bankruptcy. *Id.* "Arising under" and "arising in" provide the Court with "core" jurisdiction, allowing it to exercise full judicial power. *Miller v. Kemira, Inc. (In re Lemco Gypsum, Inc.)*, 910 F.2d 784, 787 (11th Cir. 1990). Non-core proceedings limit the bankruptcy court's authority to enter a final order or judgment. *Id.*; 28 U.S.C. § 157(c)(1). In the Eleventh Circuit, "determining whether a civil proceeding is related to bankruptcy is whether the outcome of the proceeding could conceivably have an effect on the estate being administered in bankruptcy." *Miller*, 910 F.2d at 788 (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3rd Cir. 1984)).

Here, Ms. McCarthy's bankruptcy case is closed; she has received a discharge; and the estate has been fully administered. The Property at issue is not property of the Debtor's bankruptcy estate, as evidenced by Trustee's no asset report and Trustee's notice of abandonment of the Property. Ms. McCarthy's Motions neither raise issues regarding substantive rights under the Bankruptcy Code,

nor do they raise issues unique to bankruptcy or the administration of the estate. The relief Ms. McCarthy seeks does not even involve a matter related to her bankruptcy case since the outcome of the Motions could have no conceivable impact on a closed and fully administered case, in which Ms. McCarthy received a discharge.

Ms. McCarthy's Chapter 7 case has run its course. It provided Debtor with protection from the automatic stay under § 362. Her Chapter 7 discharge eliminates her personal liability with respect to the debts discharged under § 727. 11 U.S.C. § 524(a). However, liens on estate property are not affected by a discharge. *E.g., Johnson v. Home State Bank*, 501 U.S. 78 (1991). Additionally, Ms. McCarthy's discharge only eliminates personal liability on pre-petition debts. 11 U.S.C. § 727(b). Under the facts asserted, and as understood by the Court, no legal issues have been raised that relate to Debtor's bankruptcy proceeding or the administration of the estate. The facts, as alleged, do not raise concerns regarding discharged debts or the discharge injunction. As such, the Court lacks subject matter jurisdiction as to these matters and any ruling would be improper. Accordingly, it is

ORDERED that the Motion to Reopen and Motion to Vacate Sheriff Sale are hereby **DISMISSED**.

It is **FURTHER ORDERED** that Debtor's Application for Waiver of Chapter 7 Filing Fee is **DISMISSED** as **MOOT**.

The Clerk is directed to serve a copy of this Order on the parties on the attached distribution list.

END OF DOCUMENT

Distribution List

Grace McCarthy
P.O. Box 19156
Atlanta, GA 31126

Vesta Holdings
John Ramsey, CEO
1266 W. Paces Ferry Rd. #517
Atlanta, GA 30327

Arthur Ferdinand
Fulton County Tax Commissioner
141 Pryor St.
Atlanta, GA 30303